

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ELAINE CAMPOS

Claimant

VS.

WESTERN PLAINS REGIONAL HOSPITAL

Respondent,
Self-Insured

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Docket No. 205,604

ORDER

Claimant and respondent appealed the July 13, 2000 Order entered by Administrative Law Judge Pamela J. Fuller.

ISSUES

This is a request for penalties filed in a claim for a June 12, 1995 accident. In the initial award, claimant was specifically awarded \$597.28 for medical mileage reimbursement. Also, respondent was ordered to pay Via Christi Regional Medical Center (Via Christi) the sums of \$158 and \$4,948.65. But respondent failed to pay claimant and Via Christi the amounts awarded. Claimant then brought this penalty proceeding.

On June 26, 2000, Judge Fuller conducted a hearing to address claimant's request for sanctions and penalties. At that hearing, respondent challenged the \$597.28 award for medical mileage reimbursement and argued that claimant's mileage had actually been overpaid.

By Order dated July 13, 2000, Judge Fuller determined that claimant's request for the \$597.28 medical mileage reimbursement should be denied but ordered respondent to pay \$494.87 in penalties for failing to pay the Via Christi medical expense.

Claimant contends Judge Fuller erred by ruling that claimant was not entitled to receive the \$597.28 awarded for additional medical mileage reimbursement and by failing to order penalties for the non-payment of that award. Claimant argues that medical mileage reimbursement was an issue when the case was litigated and that the Judge and the Appeals Board determined in the final award that \$597.28 was due and owing. Claimant argues that respondent did not appeal that finding and, therefore, the award for medical mileage reimbursement should be enforced. Conversely, respondent argues that

the Judge correctly decided that claimant was not entitled to receive any additional payment for medical mileage. Respondent argues that its records actually show that claimant was overpaid medical mileage reimbursement.

Claimant contends that Judge Fuller properly assessed penalties against respondent for failing to pay the medical expense incurred at Via Christi, which was ordered paid in the final award. Conversely, respondent contends Judge Fuller erred by ordering penalties for the medical expense. It argues that claimant never served written demand on respondent for payment of the Via Christi medical expense. Therefore, respondent contends that claimant failed to comply with the procedural requirements of K.S.A. 44-512a(a) and, thus, the Judge should have denied that request for penalties.

The issues before the Board on this appeal are:

1. Should respondent be allowed to contest the \$597.28 award for medical mileage when it failed to appeal that finding from the final award? If so, is claimant entitled to receive any additional payment for medical mileage?
2. What penalties, if any, should be assessed against respondent for failing to pay claimant medical mileage reimbursement?
3. Did claimant comply with K.S.A. 44-512a by serving written demand on respondent for payment of the outstanding Via Christi medical expense? If so, what penalties, if any, should be assessed against respondent for failing to timely pay that medical expense?

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds:

1. Claimant was injured on June 12, 1995, while working for respondent.
2. In a September 21, 1999 Decision, Judge Fuller specifically found that claimant had not been reimbursed \$597.28 for medical mileage. Therefore, the Judge awarded claimant that additional amount. The Judge also ordered respondent to pay Via Christi the sums of \$158 and \$4,948.65 for medical expense. The September 21, 1999 Decision was appealed to the Appeals Board who, by Order dated February 24, 2000, affirmed the orders for medical mileage reimbursement and for payment of medical expense as those findings and issues were not disputed. The respondent did not appeal the Board's Order to the Court of Appeals.
3. On April 25, 2000, claimant's attorney mailed a Demand for Compensation to respondent's attorney. The demand stated that claimant would seek penalties and attorney fees if the \$597.28 award for medical mileage was not paid within 20 days from receipt of the demand. The demand did not mention the Via Christi medical expense. On

April 26, 2000, the demand was filed with the Garden City, Kansas, Workers Compensation Division office.

4. On May 17, 2000, claimant's attorney mailed a Motion for Sanctions to respondent's attorney. The motion requested sanctions against respondent for failing to pay the \$597.28 medical mileage reimbursement that was awarded. The motion did not mention the Via Christi medical expense. On May 18, 2000, the motion was filed with the Garden City, Kansas, Workers Compensation Division office.

5. On June 1, 2000, claimant's attorney mailed an Amended Motion for Sanctions to respondent's attorney. The amended motion requested sanctions against respondent for failing to pay the \$597.28 for medical mileage and \$4,948.65 in medical expense to Via Christi. On June 5, 2000, the amended motion was filed with the Garden City, Kansas, Workers Compensation Division office.

6. At the June 26, 2000 penalties hearing, respondent's attorney represented that on June 22, 2000, Via Christi was issued a check in the sum of \$4,948.65.

7. The record does not indicate the date that respondent, or its attorney, actually received the Demand for Compensation or the Amended Motion for Sanctions. Likewise, the record does not establish the date that Via Christi actually received payment.

CONCLUSIONS OF LAW

1. The July 13, 2000 Order should be modified. For the reasons explained below, claimant is entitled to receive the \$597.28 that was awarded for medical mileage reimbursement. Additionally, claimant is entitled to receive \$59.73 in penalties due to respondent's failing to pay the \$597.28 awarded. But the penalty for failing to pay the medical expense to Via Christi is set aside.

2. The Appeals Board finds and concludes that medical mileage reimbursement was made a disputed issue before the Judge for purposes of final award. Therefore, the parties were required to present their evidence on that issue to the Judge. Claimant presented her evidence but respondent did not. Based upon the evidence presented, Judge Fuller determined in the September 21, 1999 Decision that claimant had not been fully reimbursed her medical mileage expense and, therefore, was entitled to receive an additional \$597.28 in reimbursement. That finding and conclusion was not challenged when the September 21, 1999 Decision was appealed to the Appeals Board. Therefore, the award for reimbursement was adopted by the Board in its February 24, 2000 Order. When the Board's Order was not appealed to the Court of Appeals, the award for the additional medical mileage reimbursement became final. Therefore, by the terms of the September 21, 1999 Decision and the Board's February 24, 2000 Order, claimant is entitled to receive an additional \$597.28 from respondent for medical mileage.

3. The Judge's finding that \$597.28 was due and owing in medical mileage reimbursement was based upon claimant's evidence presented at the May 20, 1999 regular hearing. Respondent would be entitled to a credit for any medical mileage paid to claimant after that date. But the payment information presented at the June 26, 2000 penalties hearing fails to show that respondent paid claimant any medical mileage reimbursement after the May 20, 1999 hearing.

4. The Workers Compensation Act provides that a worker is entitled to receive a civil penalty when compensation is not paid when due. The worker must serve written demand upon the employer and its insurance carrier that specifically identifies the disability compensation or medical expense that is claimed to be unpaid. But the employer and its insurance carrier can avoid the civil penalty by paying the compensation within 20 days after receiving the written demand. The penalty statute provides, in part:

(a) In the event any compensation, including medical compensation, which has been awarded under the workers compensation act, is not paid when due to the person, firm or corporation entitled thereto, the **employee shall be entitled** to a civil penalty, to be set by the administrative law judge and assessed against the employer or insurance carrier liable for such compensation in an amount of **not more than \$100 per week for each week any disability compensation is past due and in an amount for each past due medical bill equal to the larger of either the sum of \$25 or the sum equal to 10% of the amount which is past due on the medical bill, if: (1) Service of written demand for payment, setting forth with particularity** the items of disability and medical compensation claimed to be unpaid and past due, has been made personally or by registered mail on the employer or insurance carrier liable for such compensation and its attorney of record; **and (2) payment of such demand is thereafter refused or is not made within 20 days from the date of service of such demand.**¹ (Emphasis added.)

5. Medical mileage reimbursement is a medical expense and, therefore, for purposes of penalties should be treated as an outstanding medical expense. Therefore, claimant is entitled to receive a civil penalty from respondent in the sum of \$59.73, which is the greater of \$25 or 10 percent of the outstanding balance (\$597.28 x 10% = \$59.728).

6. As indicated above, before penalties may be assessed the worker must serve upon either the respondent or its insurance carrier a written demand for payment that sets forth the compensation being claimed past due. The respondent and its insurance carrier then have 20 days to satisfy the demand thereby avoiding penalties. Claimant's request for penalties for the Via Christi expense fails for two reasons. First, the April 25, 2000 written

¹ K.S.A. 44-512a.

demand did not specifically address the Via Christi expense. Therefore, claimant failed to follow the procedural requirements of the penalty statute as the demand did not set forth the unpaid medical expense with "particularity." Second, assuming arguendo that the June 1, 2000 amended motion could be considered as written demand for payment of the Via Christi expense, the record fails to show that the expense was not paid within 20 days from the date of service of the amended motion.

WHEREFORE, the Appeals Board modifies the July 13, 2000 Order and sets aside the \$494.87 penalty assessed against respondent for failing to pay the Via Christi medical expense. But the Board finds that claimant is entitled to receive the additional \$597.28 for medical mileage as previously awarded. Additionally, the Board assesses \$59.73 in penalties against respondent for failing to pay the award for the medical mileage reimbursement.

IT IS SO ORDERED.

Dated this ____ day of December 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS
Terry J. Malone, Dodge City, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director